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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 809

MILTON M. KARPEL,

Appellant,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Appellee.

On Appeal From the Appellate Department of the Superior Court of the State of California, for the County of Los Angeles.

Motion to Affirm the Judgment or Dismiss This Appeal.

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PHILIP E. GREY,
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IN THE

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OCTOBER TERM, 1962

No.....

MILTON M. KARPEL,

Appellant,

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THE PEOPLE OF THE STATE OF CALIFORNIA,

Appellee.

On Appeal From the Appellate Department of the Superior Court of the State of California, for the County of Los Angeles.

Motion to Affirm the Judgment or Dismiss This Appeal.

Appellee, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, moves that the judgment of the Appellate Department of the Superior Court of the State of California, for the County of Los Angeles, rendered and entered on July 17, 1962, be affirmed, or that the appeal taken therefrom to this Court be dismissed on the ground that the federal question is so unsubstantial as not to warrant further argument, and upon the further ground that the said judgment appealed from rests upon an adequate non-federal basis.

Statement.

This is a direct appeal from a final judgment entered on July 17, 1962, by the Appellate Department of the Superior Court of the State of California, for the County of Los Angeles.

Appellant was charged in a verified complaint, filed in the Municipal Court of the Los Angeles Judicial District, with four counts of violation of Section 6125 of the Business and Professions Code of the State of California (Appx. A), practicing law without a license, and a fifth count of violation of Section 484 of the California Penal Code, petty theft. Counts I through IV, charging the practice of law without a license, alleged violations on four separate dates: November 6, 1961, November 17, 1961, October 18, 1961, and December 5, 1960, in that order. The jury returned guilty verdicts on all of the five counts.

Briefly, the evidence disclosed that as to Count I appellant engaged in the practice of law by preparing and filing a notice of petition for writ of mandate [Pltf. Ex. 3; R. T. p. 15, line 20].[1] The evidence presented on Count II showed appellant's practice of law before the Superior Court of the State of California, for the County of Los Angeles, Department 65 [Pltf. Ex. 1; R. T. p. 10, line 6]. The evidence introduced as to Count III established appellant's prac-

[1] R. T. indictates Reporter's Transcript in its original page numbering.

tice of law before the Police Commission of the City of Los Angeles. The evidence on Count IV established appellant's practice of law by advising and accepting payment for acting as an attorney in a bankruptcy proceeding. [R. T. p. 45, line 1, to p. 67, line 21]. Count V involved the alleged theft of the money paid for the purported legal services in the bankruptcy proceeding.

On the appeal to the Appellate Department of the Superior Court respondent did not oppose the reversal of the judgment as to Count III of the complaint (Respondent's Brief on Appeal, p. 9, line 32), and conceded error in instruction as to Count V (Respondent's Brief on Appeal, p. 8, line 1). The Appellate Department of the Superior Court, without opinion, reversed as to Counts III and V, and affirmed as to the remainder.

Contrary to the statement appearing at the bottom of page 10 of appellant's jurisdictional statement, the count constituting the "Boomhower transaction," that is, appellant's practice of law by advising and accepting payment for acting as an attorney in a bankruptcy proceeding, was not reversed. This was established as the violation constituting Count IV of the complaint. It must be emphasized that, of the three counts affirmed on appeal by the Appellate Department of the Superior Court, only Count II presents the circumstances which appellant terms double jeopardy.

ARGUMENT.

I.

Appellant Was Not Placed Twice in Jeopardy Because He Had Been Held in Contempt of Court for the Same Act for Which He Was Convicted of Violation of Section 6125 of the California Business and Professions Code.

Appellant was held in contempt of court by Judge Gordon L. Files, then of the Superior Court of the State of California, for the County of Los Angeles, for practicing law before that court without having been admitted to practice in California [Pltf. Ex. 1, admitted R. T. p. 10, line 6, and appearing in R. T. p. 158, line 23, to p. 164, line 26]. The appearance before Judge Files was also the act constituting the violation alleged in Count II of the complaint. Because of the provisions of Sections 657 and 658 of the Penal Code, such does not constitute double jeopardy in California.

Section 657 of the California Penal Code provides:

> "A criminal act is not the less punishable as a crime because it is also declared to be punishable as a contempt." (Enacted 1872, Deering's California Codes).

Section 658 of the California Penal Code provides:

> "When it appears, at the time of passing sentence upon a person convicted upon indictment that such person has already paid a fine or suffered an imprisonment for the act of which he

stands convicted, under an order adjudging it a contempt, the Court authorized to pass sentence may mitigate the punishment to be imposed, at its discretion." (Enacted 1872, Deering's California Codes).

Furthermore, it is the law of California that a plea of once in jeopardy is a separate plea and must be entered in the minutes of the court (California Penal Code Sections 1016 and 1017; Appx. B).

Neither appellant's jurisdictional statement nor the docket of the Municipal Court of Los Angeles Judicial District indicate that the special plea of once in jeopardy was ever entered.

Under California law, failure to interpose a plea of once in jeopardy in the trial court effects a waiver of such plea and it cannot be raised and considered for the first time on appeal (*People v. Garcia*, 166 Cal. App. 2d 141, 333 P. 2d 69). A plea of not guilty does not raise the issue of former jeopardy (*People v. Barry*, 153 Cal. App. 2d 193, 314 P. 2d 531; certiorari denied, 355 U. S. 956).

Certainly the California statutes and procedures have not subjected appellant to that kind of double jeopardy so acute and shocking that it constitutes a violation of due process of law (*Brock v. North Carolina*, 344 U. S. 424).

II.

California's Statute Declaring No Person Shall Practice Law Unless He Is an Active Member of the State Bar Is Definite and Certain, and a Valid Penal Statute.

The phrase "practicing law" or its equivalent, "the practice of law," has long had a sufficiently definite meaning throughout this country to be given a place in both constitutional and statutory law without further definition.

People v. Ring, 26 Cal. App. 2d Supp. 768, 70 P. 2d 281.

As stated in *Roth v. United States*, 354 U. S. 476, 491:

> "This Court however, has consistently held that lack of precision is not itself offensive to the requirements of due process. . . . 'The constitution does not require impossible standards;' all that is required is that the language 'conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices. . . .' *United States v. Petrillo*, 332 U. S. 1, 7, 8, 91 L. Ed. 1877, 1883, 67 S. Ct. 1538."

Furthermore, appellant's jurisdictional statement does not indicate nor does the record appear to disclose that this point was raised at the trial level.

It is a general rule of California appellate review, early established and long adhered to, that questions not raised in the trial court will not be considered on appeal.

People v. Alvidrez, 158 Cal. App. 2d 299, 322 P. 2d 557;

MacKenzie v. Angle, 82 Cal. App. 2d 254, 186 P. 2d 30.

III.

Appellant, as a Layman, Does Not Have a Constitutional Right to Appear and Represent in Legal Matters a Corporation in Which He and His Wife Are the Only Shareholders.

A natural person may represent himself and present his own case to the court although he is not a licensed attorney. A corporation is not a natural person. It is an artificial entity created by law and as such it can neither practice law nor appear or act in person. Out of court it must act in its affairs through its agents and representatives, and in matters in court it can act only through licensed attorneys. A corporation cannot appear in court by an officer who is not an attorney, and it cannot appear *in propria persona*.

Paradise v. Nowlin, 86 Cal. App. 2d 897, 898, 195 P. 2d 867, citing: *Bennie v. Triangle Ranch Co.*, 73 Colo. 586, 216 Pac. 718; *Mortgage Comm. v. Great Neck Imp. Co.*, 162 Misc. 416, 295 N. Y. S. 107, 112; *Aberdeen Bindery v. Eastern States Etc. Co.*, 166 Misc. 904, 3 N. Y. S. 2d 419, 423; *Finox Realty Corp. v. Lippman*, 163 Misc. 870, 296 N. Y. S. 945, 949; *J. T. Whalen, Inc. v. Pritzert*, 167 Misc. 471, 3 N. Y. S. 2d 418; *Nispel v. Western Union R.R. Co.*, 64 Ill. 311, 314; *Nixon, Ellison & Co. v. Southwestern Ins. Co.*, 47 Ill. 444, 446; *Kankakee Drainage Dist. v. Commissioners*, 29 Ill. App. 86, 87; *State Bank v. Bell*, 5 Blackf. (Ind.) 127; *Culpeper Natl. Bank v. Tidewater Imp. Co.*, 119 Va. 73, 89 S. E. 118, 120; *Clark v.*

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As indicated by such authority, the prohibition against laymen acting as attorneys on behalf of corporations is quite universal. No federal question appears to be raised by such prohibition.

Appellant's argument that as a layman he had a constitutional right to act as counsel for a corporation in which he had shares is, of course, directed only at Counts I and II of the complaint. Count IV was an entirely independent transaction involving the bankruptcy proceeding.

IV.

Appellant Was Given His Day in Court and a Speedy Trial.

Appellant, in questions 4 and 5 of his questions presented by appeal, urges that he was deprived of his day in court and denied a speedy trial in violation of the Fourteenth Amendment to the Constitution of the United States. He does not develop these contentions.

The purported deprival of his day in court apparently involved either Count III of the complaint or the introduction into evidence of People's Exhibit 12 [R. T. p. 293, line 24]. Count III was reversed on appeal to the Appellate Department of the Superior Court, for the County of Los Angeles. People's Exhibit 12 was introduced on rebuttal for purpose of impeachment on a most material point. The exhibit and the testimony concerning it [R. T. p. 280, line 6, to p. 281, lines 1-13] indicate that appellant had no financial interest in the corporation in question, which was certainly contrary to appellant's whole theory (then and now) that he was entitled to represent the corporation because he was a part owner [R. T. p. 183, line 21, to p. 199, line 13].

Appellant received a speedy trial. The complaint was filed November 29, 1961. He was arraigned November 30, 1961, and trial was set for December 26, 1961. On such date appellant did not appear and his counsel moved for a continuance, which was denied. A bench warrant issued, appellant appeared, and the cause was then continued to January 11, 1962, on appellant's motion. The case went to trial on such date (pages 1 and 2 of Transcript of Docket of Municipal Court).

V.

The Supreme Court of the United States Should Not Take Jurisdiction to Review a Judgment Where No Opinion Was Delivered by the Highest State Court, and Where Such Judgment Is Sustainable on Non-Federal Grounds.

No opinion was delivered by the Appellate Department of the Superior Court, for Los Angeles County (Jurisdictional Statement, Appx. B).

In *Stembridge v. State of Georgia*, 343 U. S. 541, it was held that, where the highest court of the state delivers no opinion and that it appears the judgment might have rested upon a non-federal ground, this court will not take jurisdiction to review the judgment.

The judgment of the Appellate Department of the Superior Court, as to appellant's double jeopardy point, could well have rested on the state ground of his failure to plead such defense. The judgment of such court as to whether the California statute prohibiting the unlicensed practice of law is unconstitutionally vague and indefinite, could have rested on appellant's apparent failure to raise the question at the trial level.

Appellant's other points do not appear to raise a federal question.

Appellee urges, therefore, that the appellant presents no substantial question for the decision of this Court; that the judgment sought to be appealed from should be affirmed or the appeal dismissed.

Respectfully submitted,

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APPENDIX A.

Section 6125, Business and Professions Code of the State of California.

Necessity of active membership in state bar. No person shall practice law in this State unless he is an active member of the State Bar. (Stats. 1939, c. 34, p. 359, sec. 1.)

APPENDIX B.

Section 1016 of the Penal Code of the State of California.

There are five kinds of pleas to an indictment or an information, or to a complaint charging an offense triable in any inferior court:

1. Guilty.
2. Not guilty.
3. A former judgment of conviction or acquittal of the offense charged.
4. Once in jeopardy.
5. Not guilty by reason of insanity.

A defendant who does not plead guilty may enter one or more of the other pleas. A defendant who does not plead not guilty by reason of insanity shall be conclusively presumed to have been sane at the time of the commission of the offense charged; provided, that the court may for good cause shown allow a change of plea at any time before the commencement of the trial. A defendant who pleads not guilty by reason of insanity, without also pleading not guilty, thereby admits the commission of the offense charged. (Stats. 1951, c. 1674, p. 3843, sec. 81.)

Section 1017 of the Penal Code of the State of California.

Every plea must be made in open court and may be oral or in writing, and must be entered upon the minutes of the court and must be taken down in shorthand by the official reporter if there is one present. The plea, whether oral or in writing, must be in substantially the following form:

1. If the defendant plead guilty: "The defendant pleads that he is guilty of the offense charged."

2. If he plead not guilty: "The defendant pleads that he is not guilty of the offense charged."

3. If he plead a former conviction or acquittal: "The defendant pleads that he has already been convicted (or acquitted) of the offense charged, by the judgment of the court of ..... (naming it), rendered at .....(naming the place), on the ....day of ....."

4. If he plead once in jeopardy: "The defendant pleads that he has been once in jeopardy for the offense charged (specifying the time, place, and court)."

5. If he plead not guilty by reason of insanity: "The defendant pleads that he is not guilty of the offense charged because he was insane at the time that he is alleged to have committed the unlawful act." (Stats. 1951, c. 1674, p. 3843, sec. 82.)